

THE COMPARISON OF THE INDONESIAN PPATK ROLE WITH OTHER COUNTRIES FINANCIAL INTELLIGENCE UNIT (FIU)

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Abstract

Today the fight against international money laundering activities is increasing, even in many countries and on a regional basis it has become one of the political agenda that is always discussed. Some of the things that drive a number of governments to combat money laundering especially is a concern of organized crime that the results so far untouched by the applicable laws and regulations, in addition to the international pressure on countries that have not implemented anti-money laundering regime completely, as experienced by Indonesia and other countries.

Keywords : Financial Intelligence Unit (FIU)

1. BACKGROUND

Today the fight against money laundering activity internationally is increasing, even in many countries and on a regional basis it has become one of the political agenda that is always discussed. Some of the things that drive a number of governments to combat money laundering is a concern especially organized crime that the results so far untouched by the applicable laws and regulations, in addition to the international pressure on countries that have not implemented anti-money laundering regime by completely, as experienced by the Philippines and Indonesia. The amount of attention to the nations of the crime is mainly due to its effects, among others, in the form of financial system instability, economic distortions and possible disruption to control the money supply. This is due to the accumulation of funds that can be exploited by money laundering activities include a very large number, although it is difficult to estimate the exact number due to the nature of the covert activities and is not reflected in the statistics. Indonesia, as well as with other countries, also gave great attention to transnational organized crime such as terrorism and money laundering. One of the real form of the concern is passing of the Law No.. 15 of 2002 on Money Laundering on 17 April 2002. This law gives the product a solid legal basis in the prevention and combating of money laundering, as well as tangible evidence of the commitment of Indonesia to jointly cooperate with the international community to stifle any form of crime money laundering in a variety of dimensions that exist. This law not only has been stated, that the act of money laundering a criminal offense, but it also has given rise to a new institution called the Center of Reports and Analysis of Financial Transaction (The PPATK). In international practice in the field of money laundering institutions as The PPATK its called by the generic name Financial Intelligence Unit (FIU). Related to that, in this paper we will elaborate further on the role of The PPATK as the Financial Intelligence Unit (FIU) and the intelligence function in handling money laundering cases.

Based on the above description, the problem in this study are as follows:

- a. How does the role and function of The PPATK in Indonesia?
- b. How does the role of The PPATK in comparison with other countries?

2. THE RESEARCH METHODS

The method used in this study is normative and empirical, using secondary and primary data, through the study of literature and field studies, and data analysis with qualitative analysis. Data collection and processing procedures, after the data is compiled, then analyzed by the way of judicial analysis done by sorting or provides insights into the data that has been compiled systematically with the aim to provide an overview of the issues answered based on the research.

3. THEORETICAL FRAMEWORK

The word "constitution" is derived from the French language *Constituer* and the *Constitution*, the first word means establish, build or construct, and the second word means the arrangement or institution (community). Thus the constitution has a meaning; beginning of all regulations of a State. In general, the first step to study the constitutional law of a country starting from the relevant state constitution. Study the constitution means also studied constitutional law of a country, so that constitutional law is also called the law constitutional. The term Constitutional Law in the UK showed the same meaning as constitutional law. The use of the term Constitutional Law is based on the the reason that in the State constitutional law the element of constitution is more prominent. Thus a constitution contains rules or joints fundamental principal to enforce a large building called the "State". Because it is fundamental that this rule should be strong and should not be volatile. In other words, the fundamental rule that should stand the test of the possibility to be changed based on short-term interests that are instantaneous.

4. DISCUSSION

THE PPATK ROLE

In the Law No.15 of 2002 on Money Laundering Act, as amended by Act 25 of 2003 expressly states that the act of money laundering is a criminal offense. Then, the law mandates the central institution in the execution / implementation of this rule called The Center of Reports and Analysis for Financial Transaction (The PPATK). By rule, the agency is tasked to collect, store, compile, analyze, evaluate information obtained from providers of financial services; create guidelines on procedures for reporting suspicious financial transactions; provide advice and assistance to other authorized information obtained the corresponding provisions MLA Law; provide recommendations to the Government in relation to the prevention and combating of money laundering; report the results of an analysis of financial transactions with indications of money laundering to the police for the purpose of investigation and and the Attorney for the benefit of prosecution and supervision; make and submit a report on the analysis of financial transactions and other activities periodically to the President, Parliament and authorities conduct surveillance for the Provision of Financial Services (PFS). The authority of The PPATK, among others: request and receive reports of The PJK; requested information on the development, investigation or prosecution of money laundering offenses that have been reported to the investigator or prosecutor. In order to detect money laundering, The PPATK received a report form:

1. Suspicious transaction reports submitted by the provision of financial services (Article 1 paragraph 6 and Article 13 MLA Law),
2. Reports submitted by financial service providers about financial transactions made in cash in the cumulative amount of IDR 500 million or more (Article 13 MLA Law),
3. A report commissioned by the Directorate General of Customs regarding the carriage of Rupiahs of cash into or out of the territory of the Republic of Indonesia of Rp 100 million or more (Article 16).

Meanwhile, in Article 40 of Law No. 8 Year 2010 on Money Laundering Criminal Action, explained the functions of the INTRAC. As for the function of this board include:

1. Prevention and eradication of Money Laundering Criminal Action
2. Data processing and information obtained INTRAC
3. Rapporteur of the Compliance Oversight
4. Analysis or inspection reports and financial transaction information berindikasiTindak Criminal Money Laundering and / or other criminal acts.
5. Center for Financial Transaction Reporting and Analysis (INTRAC) or the Indonesian Financial Transaction Reports and Analysis Centre (INTRAC) was formed with the authority to implement the policy of prevention and combating money laundering while developing anti-money laundering regime in Indonesia.

This will be very helpful in our efforts to maintain a stable financial system and reduce the occurrence of the original criminal acts, (Predicate Crimes). Money laundering as a crime that is the subject of new International dimension in many countries including Indonesia. Money laundering poses a negative impact on the economy of a country for possible money laundering money proceeds of a crime such as narcotics trade, corruption, arms smuggling, gambling, tax evasion and other. Until the case prompted the world's nations and international organizations put serious attention to the prevention and eradication of this problem. In general there are several reasons why the money laundering fight and expressed as a criminal act, namely: The influence of money laundering in the financial system and the economy is

believed to have a negative effect on the world economy. The sharp fluctuations in exchange and interest rates are part of the negative consequences of money laundering. With all of the negative impact it is believed, that money laundering can affect the world economy; With the declared money laundering as a criminal offense will make it easier for law enforcement officials to confiscate the proceeds of crime which sometimes difficult to be seized, for example, the asset which is difficult to track or has transferred to third party. With this, the eradication of the crime have switched the orientation of "cracking down on perpetrators" towards seized "proceeds of crime"; With the declared money laundering as a criminal offense and with the reporting system and the transaction within a certain number of transactions which suspicious, then it is easier for law enforcement officials to investigate a criminal case until the characters behind them. Institution established in international practice in the field of money laundering similar to the INTRAC called by the generic name of the Financial Intelligence Unit (FIU). FIU is a permanent body which specifically address the issue of money laundering. FIU's existence was first set implicitly in the Forty Recommendations of the Financial Action Task Force on Money Laundering (FATF). This institution is one of the most important infrastructure in preventing and combating money laundering in each country. The existence of specialized institutions is absolutely must exist, and plays a strategic role due to the problem of money laundering is a very complicated issue, involving organized crime which understand the various techniques and sophisticated crime mode. Addressing the issue of money laundering to become heavier especially because the characteristics of this crime is generally done through the national borders (cross-border). There are four types of FIU, in international practice, namely: Police Model, Police Model which usually placed under the police force, such as NCIS (United Kingdom), Slovakia (OFIS), New Zealand, Switzerland, Hong Kong, STRO (Singapore). Here suspicious financial transactions reports or cash transaction reports, addressed directly to the agency, which generally has the authority to investigate; Judicial Model, for example, Iceland and Portugal. Usually suspicious transactions reports addressed to the prosecutor's office for processing Supreme; Integrated Model, in this case the report is aimed at joint police / judicial institutions combined unit as in Norway and Denmark; Administrative Models, with variations: an independent institution under the government, such as AUSTRAC (Australia), FinTRAC (Canada), Fincen (USA) or under a Central Bank like in Malaysia or under the Financial Service Authority as in Japan. FIU four kinds of models differ in terms of size and organizational structure and responsibilities that all depends on the settings in each country. So none of the FIU in the world who actually equal or uniform in other countries. FIU main tasks outlined by the identification made by Egmont GROUP are as follows: Receiving suspicious transaction reports and currency transaction reports from the reporting party; Conducting an analysis of the reports received from the complainant. In relation to this task FIU issued guidelines for identifying transactions that must be reported, and Continuing the analysis of the report to the appropriate authorities. Meanwhile, to support the duties and functions of FIUs at least have the authority: Obtaining documents and additional information to support the analysis conducted; has adequate access to any person or agency that provides financial information, organizing administrative and financial transactions related to law enforcement officers ; Has the authority to set sanctions against reporting parties who do not comply with reporting obligations; has the authority to submit financial information and intelligence information to the competent authorities in the country for the sake of investigation into alleged money laundering; Doing the exchange of information regarding the financial information and information and intelligence with similar institutions abroad, as well as ensure that the exchange of information in accordance with national law and international principles regarding the data privacy and data protection. As an institution that manages information relating to financial intelligence, data management and statistical efficient use of information systems needs to be implemented. In this regard, the FIU shall have an information system that manages the data statistics including: Suspicious transaction reports (STR) has been received, analyzed and submitted to the appropriate authorities. The Financial Action Task Force (FATF) was established in 1989 which has the task of creating a standard policy in order to prevent money laundering activities. Considering the money laundering activities of the country has crossed the line, it would require a commitment to implement the recommendations made by international organizations such as the Financial Action Task Force 40 Recommendations. The Financial Action Task Force (FATF) made "operational definition of" money laundering as follows :

The conversion or transfer of property, knowing, it is derived from a criminal offense, for the purpose of concealing or disguising its illicit origin or of assisting any person who is involved in the commission of the crime to evade the legal consequences of his actions; The concealment or disguising of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property knowing that it is derived from a criminal offense; The acquisition,

possession or use of property, knowing at the time of its receipt that it was derived from a criminal offense or from participation in a crime.

1. Indonesia, as well as with other countries, also gave great attention to transnational organized crime such as terrorism and money laundering. One of the real form of that concern is the legalization of Law. 15 of 2002 on Money Laundering on April 17, 2002. In general, the existence of institutions are intended to Indonesia's effort to participate together with other countries to combat transnational organized crimes such as terrorism and money laundering (money laundering). This law gives the product a solid legal basis in the prevention and combating of money laundering, as well as tangible evidence of the commitment of Indonesia to jointly cooperate with the international community to stifle any form of crime money laundering in a variety of dimensions that exist. Money Laundering which translates to money laundering in Law. 15 of 2002 as amended by Law No. 25 of 2003 (hereinafter referred to as AML Law) is defined: As an act of placing, transferring, paying, spend, donate, entrust, bringing overseas, exchange or other actions on properties are known or reasonably suspected to be the proceeds of crime with the intent to conceal or disguise the origin of the property so as to appear to be legitimate wealth. The definition needs to be given an explanation as follows: In the definition includes the word "as if", so even if the money laundering process is successful, but the assets derived from proceeds of crime has never been a legitimate or bleached. Thus the term used is "money laundering" not "money bleaching". In Malaysia, the term money laundering translates to "money changing". Money laundering is always associated with wealth derived from crime, so there is no money laundering offense if nothing is done (no crime, no money laundering). Center for Financial Transaction Reports and Analysis Center (INTRAC) in full operation since October 18, 2003 in the banking sector, Duties and Powers INTRAC relating to receipt and analysis of suspicious financial transactions in the banking sector, carried out by the Special Investigation Unit of Bank Indonesia (UKIP-BI). Further to the submission of suspicious transaction documents and other supporting documents that took place on October 17, 2003, the duty and authority is fully switched to INTRAC. Act 15 of 2002 on Money Laundering Act, as amended by Act 25 of 2003 – (AML Law) gave the task to the Center for Financial Transaction Reports and Analysis Center (INTRAC), among others, providing information to the public about institutional performance during the provision of information is not prohibited by law. INTRAC duties and authority set forth in Article 26 and Article 27 of Law 15 of 2002 as amended by Law No.. 25 of 2003 (AML Law). INTRAC tasks, namely: Collecting, storing, analyzing, evaluating information that has been analyzed by INTRAC; Monitor records in the register of exceptions made by the Financial Service Provider; Create guidelines on procedures for reporting suspicious transactions; Provide advice and assistance to relevant authorities on information obtained by INTRAC; Issuing guidelines and publications to the Financial Service Providers on duty to help in the detection of suspicious customer behavior; Provide recommendations to the Government on measures of prevention and combating of money laundering; Report on the analysis of financial transactions with indications of money laundering to the police and prosecutors; Create and provide reports on the analysis of financial transactions and other activities on a regular basis every 6 months to the President, the House of Representatives, and the competent authorities to supervise the financial Service Providers; provide information to the public about institutional performance.

1. INTRAC authority, namely: Request and receive reports from the Financial Service Provider; Ask for information about the investigation or prosecution of money laundering offenses that have been reported by the investigator or prosecutor; Conduct an audit of the Financial Service Provider regarding compliance, liability in accordance with the provisions of the Act legislation and the guidelines regarding the reporting of financial transactions; Provide exception reporting obligations on financial transactions conducted in cash. The rapid advances in technology and the globalization in the banking sector to make this industry an easy target for criminals laundering money. Criminals can take advantage of the bank for money laundering activities. It was caused by the banking products and services that allow the traffic or the transfer of funds from one bank to the bank or other financial institution. Such conditions lead to the origin of the money is difficult to trace by law enforcement officers. Even through the banking system, the actors in a very fast time to move criminal proceeds beyond the jurisdiction of the state. The transfer resulted in increased tracking even more difficult if the fund goes into strict bank secrecy. Towards the end of October 2010, after a lengthy debate, finally the House of Representatives (DPR) of the Republic of Indonesia passed Law No.. 8/2010, of the Money Laundering (AML Law) who new. In this context, chairman of the Center for Financial Transaction Reports and Analysis Center (INTRAC), Yunus Husein, states can breathe a sigh of relief, but still respond to it critically. The most important change who occurred in the new law, among others, regarding the authority of a criminal investigation and or money laundering. As known, the investigation authority, before the ratification of this Act, solely owned by the

police. Now with this new law, the authority was also given to five other institutions, the Attorney General, the Corruption Eradication Commission (KPK), the National Narcotics Agency (BNN), Directorate General of Taxation, and the Directorate General of Customs and Excise.

However, some people regret why INTRAC authority related investigation remains unchanged. In fact, the public who represented by non-governmental organizations, have to strive for a stronger INTRAC having investigative authority. But the attempt failed. INTRAC "only" authorized investigation does not have to force nature. Not only that, the proposal to oversee the financial transactions among lawyers, public notaries and accountants, also foundered.

The question is whether the new law meets international standards? Yunus Husein, as published in Tempo Magazine (24/10-2010) says, there is a standard that has not been fulfilled or to be repaired. Related issues such as criminalization, the previous law only active people launder money and receive proceeds of money laundering can be entangled. While the new law, parties who may be exposed to money laundering also includes people who know, conceal and disguise.

Moreover, according to this new law, INTRAC also authorized to supervise non-financial areas such as gold-diamond stores and automobile dealers. But admittedly have not managed to enter the profession of lawyers, public notaries and accountants, as set legislation in Australia and Malaysia. During the discussion in the House, there is no party that defends agumentasi INTRAC, finally agreed just a report to the relevant supervisory agency. For example, accountants reporting to the Ministry of Finance, Ministry of Justice and the notary to human rights, as well as lawyers to the Supreme Court.

INTRAC chairman added, since the beginning it did not intend to ask investigative authority, because not all countries use the model. That is, there INTRAC in a country that is structurally under the authority of the prosecutor and the police with investigations such as Denmark. There are also such as in Singapore, despite being under police and prosecutors but did not having an investigator. While the other model, which is under the central bank and did not have an investigator, such as Malaysia. In Indonesia, entered the administrative system, as is the practice in Australia and the United States, where the government INTRAC is under investigation and no authority.

Although some have argued that INTRAC authority to investigate an urgent need, chairman likens INTRAC eradication of corruption especially money laundering, such as football games. That is, there must be those who are on the defensive, feeders and attackers. Well, INTRAC position as a midfielder role to provide feedback that should be continued or completed. Means, the attacker should stay good. In the previous law, only one attacker or investigator, the police. Now, under the new AML Law, attackers have six. So, if the right-wing attacker jams, there are still other investigators from the left side. Therefore, the INTRAC still claim there is quite a lot of progress in this new law, not only the changes that are artificial. In addition, INTRAC itself also does not have the investigator. For comparison, The Corruption Eradication Commission who has the authority of investigation, until now still asking for help the police and the prosecutors to do the task.

INTRAC relevant authority "only" inspection, INTRAC Chairman asserted, the essence remains the same. Admittedly, the task is no examination of coercion. But on the bright side, it could actually go down or check the case without having to force to force. Moreover INTRAC also retains the right to require tapping the party being examined, including the request to postpone the financial transactions for five days, but instead of blocking. Indeed the authority of delay (suspend) the transaction was nothing in it for INTRAC. Because, if it is allowed to block, it will face the risk of a lawsuit by the account holder. By delaying the transaction authority, where it can bind INTRAC recommendation of the police, so it can not open the account at will.

So far, the central bank alone can only delay the transaction for one day, while INTRAC can ask for a delay transactions for five to 20 days. No wonder that there is a presumption that INTRAC related delays become more powerful than the BI transaction. Other countries, such as INTRAC in Malaysia, has no such authority.

It should be emphasized, the most significant advances in the new law are the six institutions are allowed to investigate money laundering cases. Even the Law also explicitly mentions that the six institutions can initiate investigations on its own, including the KPK. Consequently, although the money laundering case not from INTRAC, but if there is an element of the investigator according to money laundering, so they can be directly investigated. On the other hand, the INTRAC also be able to provide the inspection report to the police with copies to five other investigators. Copies of it are very important in order to make it actionable reports. That is, information that is not evidence, but must be followed up as an early indication of the occurrence of corruption or money laundering.

The acceptance of receives six investigator institutions were unexpected. In some countries, there is no investigators institution as many in Indonesia. INTRAC party has ever done research in several countries such as Malaysia, Thailand, Philippines, Korea, America and Hong Kong, which embrace multi-investigator, not as much as Indonesia.

What about the concern that states the issue of bank secrecy can be disrupted by the birth of the new AML Law? According to the Chairman of INTRAC, related to combating money laundering, there is no such thing as bank secrecy. Therefore, there is a greater public interest, namely the rule of law. While the issue of bank secrecy, concerns over individual interests. (Zaenal Wafa).

5. CLOSING

CONCLUSION

From the above discussion does not have the authority INTRAC pro justicia, INTRAC authority held only a preliminary examination (preliminary investigation) and the need to provide pro justicia for INTRAC authority in the investigation of money laundering based on comparisons with financial intelligence units of Malaysia and other countries. The authority aims to pro justicia money laundering checks run effectively and efficiently so that the crime of money laundering to decline.

Theoretical implications of this research, is a change in legislation on Money Laundering, so INTRAC has pro justicia authority set forth in the Law on Money Laundering. While the practical implications is the result of this study can be used as reference material in the discourse and amendments to the Law on Money Laundering, in the context of money laundering that money laundering crime decreased and create economic stability as well as investments made by entrepreneurs uncontaminated crime.

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